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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO DERAS,

Defendant and Appellant.

B290689

(Los Angeles County
Super. Ct. No. BA464756)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frederick N. Wapner, Judge. Affirmed.

Nadezhda M. Habinek, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Fernando Deras appeals from a judgment of conviction for felony domestic violence entered after a jury trial. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Information

Deras was charged in an information with one count of willfully inflicting corporal injury on his wife, D.M. (Pen. Code,¹ § 273.5, subd (a)). The information specially alleged that Deras had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12) for which he served a separate prison term within the meaning of section 667.5, subdivision (b).

B. The Incident

On the evening of December 31, 2017 D.M. arrived home from work and noticed Deras was taking a shower. There was a lot of steam coming from the bathroom, and D.M. asked Deras how long he had been in there. A few minutes later Deras entered the living room and asked D.M. “what [her] problem was.” D.M. was sitting on the couch; Deras was standing about 10 feet away. D.M. responded there was no problem. Deras approached D.M., repeating there must be a problem between them. D.M. told Deras she had guests coming over and asked him to leave. Deras responded, “Too bad. I’m staying.”

Deras then approached D.M. with his fists clenched. D.M. picked up her cell phone and texted a friend, asking for help. Deras grabbed the phone and placed it in his shorts. He pushed D.M. down on the couch, got on top of her, and placed his right

¹ Further statutory references are to the Penal Code.

arm around her neck. He stated, "What's wrong with you?" As he spoke, he applied pressure to D.M.'s neck three times. D.M. asked him to let go, and after a few seconds he did. Deras then got off D.M., grabbed her by her wrist, and tried to pull her to the floor. D.M. resisted, but Deras pulled her toward the front door and threw her on a chair.

Deras turned off the lights and locked the front door, then pulled D.M. up by the wrist and pushed her into the bedroom and onto the bed. He locked the door to the bedroom and got on top of D.M. When D.M. started to cry, Deras placed his hand over her mouth and threatened to kill her if she screamed. D.M. became quiet, and Deras let her sit up. Deras then punched the side of D.M.'s face with his fists, causing her to "black[] out" momentarily. Her face was numb. Deras said the only reason he did not kill her was because she was the mother of his child. He left the bedroom, and D.M. fled from the house.

D.M. called the police from a friend's house. When Los Angeles Police Officer Cristian Valenzuela arrived at the friend's home shortly after 6:00 p.m., D.M. was crying and appeared scared and nervous. She had a two-and-a-half- to three-inch bruise to her upper cheek that was turning green and a long scratch on the left side of her neck.

D.M. also testified about an incident in March 2011, during a period in which she and Deras were separated. While traveling on a bus, D.M. and Deras discussed whether to reconcile. When they exited, D.M. made clear she did not want to get back together. Deras was angry and struck D.M. in the face with a gallon jug of water that was half full. D.M. fell to the ground and blacked out. Deras then punched D.M. with his fists on both

sides of her head. She again lost consciousness, and woke up alone in the street.

C. The Verdict and Sentencing

The jury found Deras guilty of inflicting corporal injury on a spouse. Deras filed a motion to dismiss the prior strike conviction (Pen. Code, § 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497). The prosecution opposed the motion and requested the court sentence Deras to an aggregate term of seven years in state prison. At the sentencing hearing, the trial court heard argument of counsel and a statement from Deras. The court denied the motion to dismiss, noting Deras's conduct was "terrifying," Deras told D.M. he would have killed her if she was not the mother of his child, the 2012 prior strike conviction was recent, and Deras served prison time in 2015 for a gun charge. The court sentenced Deras to the lower term of two years, doubled under the three strikes law, for an aggregate prison sentence of four years. The court dismissed the one-year prior prison term enhancement. The trial court awarded Deras 268 days of presentence custody credit (134 actual custody credit plus 134 days conduct credit).

DISCUSSION

We appointed counsel to represent Deras on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On February 1, 2019 we advised Deras he had 30 days in which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the entire record and are satisfied Deras's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

FEUER, J.

We concur:

ZELON, Acting P.J.

SEGAL, J.